

EXHIBIT A

1 Q. We were talking about the fact that I think
2 you said 90 percent of the time in that job was
3 spent in various retail stores, and you had
4 mentioned Home Depot as one of the retail stores?

5 A. Correct.

6 Q. Could you tell me the other retail stores
7 you visited in the course of your work at Washington
8 Inventory?

9 A. Some of the others are Target, Sears, the
10 Disney stores, Banana Republic, Kids 'R Us, Shaw's,
11 Brook's, Osco Drugs, Walgreen's. Do you want more?

12 Q. As many as you can remember, yes.

13 A. This wouldn't be a retail store, but people
14 who would run book shows, a Reader's Digest company
15 called Books Are Fun. That's all I can remember
16 right now.

17 Q. Is it fair to say most of the time you were
18 actually performing inventory work for Washington
19 Inventory you would be inside a retail store?

20 A. Most of the time, yes.

21 Q. How were you assigned work? Did you have a
22 geographical territory and visit the same stores
23 regularly or how did that work?

24 A. No, we didn't -- well, we visited pretty

1 much the same stores, but we would go in groups. I
2 wouldn't go alone. We would go in groups, and these
3 were all scheduled ahead of time.

4 Q. How many folks would be in the group?

5 A. It depended on the size of the store and
6 the type of inventory we were conducting. It could
7 sometimes be three, sometimes we would be 30,
8 sometimes we would be over 100.

9 Q. Was it usually the case when you and the
10 folks in your group would conduct an inventory that
11 the store itself would be closed to customers?

12 A. Not necessarily. Some accounts would
13 require us to do the inventory when the stores close
14 and some others, no. Some we do when the stores
15 open.

16 Q. In the case of Home Depot, did they have a
17 policy as to whether they had you folks in to do
18 inventories with customers present or only when the
19 store was closed?

20 A. No. We would usually start before they
21 opened, but we would continue during the day, and
22 they would have business as usual, and we would
23 still be doing inventory.

24 Q. So your inventory would take place starting

1 in the morning before they opened?

2 A. Correct.

3 Q. And finishing whenever you were finished?

4 A. Whenever we would finish.

5 Q. Was that always the case with the Home
6 Depot stores you visited in the course of your work

7 --

8 A. Yes.

9 Q. -- with Washington Inventory?

10 A. Yes.

11 Q. Had you visited the Manchester, New
12 Hampshire Home Depot store in the course of your
13 work with Washington Inventory before the date of
14 your accident?

15 A. Yes.

16 Q. How many times?

17 A. I believe one other time.

18 Q. On that prior occasion, do you recall what
19 particular inventory you counted on the prior
20 occasion?

21 A. Yes. I was what they called a dedicated
22 counter, and I would count the same thing in every
23 store. I was assigned to the millwork or the doors
24 and window section. That was my assigned area,

1 which I would do. I was assigned to that in every
2 Home Depot.

3 Q. How many Home Depots did you visit in the
4 course of your work with Washington Inventory?

5 A. How many different Home Depots or how many
6 Home Depots had we done?

7 Q. How many Home Depots did you visit in the
8 course of your work, you personally?

9 A. 15.

10 Q. Throughout Massachusetts and New Hampshire?

11 A. Massachusetts, New Hampshire and Maine.

12 Q. Each time you would visit a Home Depot
13 store, your specific function was to count inventory
14 in the millwork in the doors and windows section?

15 A. Yes.

16 Q. Would you generally be counting the same
17 products in each store that you visited, each Home
18 Depot store?

19 A. Pretty much.

20 Q. Of the 15 different Home Depots you
21 visited, how many times did you visit a Home Depot
22 store in the course of your work with Washington
23 Inventory?

24 A. I don't understand the question. Could you

1 repeat that, please?

2 Q. Sure. You visited 15 different stores,
3 approximately, throughout Maine, Massachusetts and
4 New Hampshire when you worked for Washington
5 Inventory. Did you visit some of those stores more
6 than once?

7 A. Yes.

8 Q. Can you tell me how many times you had been
9 in a Home Depot store in the course of your work at
10 Washington Inventory?

11 A. How many times I had been all together?

12 Q. Right.

13 A. 35, 40 times.

14 Q. You have been to the Manchester store one
15 time before the accident?

16 A. Yes.

17 Q. Did you work at all for Washington
18 Inventory after the accident?

19 A. Yes.

20 Q. Did you count inventory after the accident?

21 A. Yes.

22 Q. Did you visit the Manchester, New Hampshire
23 store in the course of your employment at Washington
24 Inventory after your accident?

1 be?

2 A. Yes.

3 Q. When you would be given an assignment, and
4 let's just say in the example of the Manchester Home
5 Depot store, what would the specific assignment be?
6 What would be communicated to you?

7 A. Well, once we reached the store?

8 Q. No. The week prior, when you learned where
9 you were going to be the next week, and on Tuesday
10 it says Manchester, New Hampshire Home Depot store,
11 is that all it says?

12 A. That's all it says.

13 Q. And because of your assignment with the
14 company, you know that since it's Home Depot, you're
15 going to be working in millwork in doors and
16 windows?

17 A. More than likely, yes.

18 Q. Do you also know you're going to be working
19 with a team of people when you go to the Home Depot
20 store?

21 A. Yes.

22 Q. In the case of the Manchester, Home Depot
23 store, how many people went on the day of your
24 accident, if you know?

1 A. There were more than one office involved.
2 I would say there must have been maybe 125 people
3 there.

4 Q. So before you got there, you know that more
5 than likely you're going to go to millwork in doors
6 and windows?

7 A. Yes.

8 Q. When you arrive at the store that day, is
9 that somehow confirmed?

10 A. Yes.

11 Q. How does that work?

12 A. Karen Johnson would be in front of the
13 whole group of us, and she would give a little pep
14 talk, and then assigned different groups, and she
15 would probably say, Paul, you know where to go, and
16 I would go.

17 Q. Were you the only person that day assigned
18 to millwork? Do you want to take a break?

19 A. No. I'm trying to think. I think I had a
20 partner that day. Sometimes I had a partner and
21 sometimes I didn't. I think I did have a partner
22 that day.

23 Q. I've seen reference to a name.

24 A. Gallagher.

1 Q. Can you tell me what happened?

2 A. Yes. I was counting mailbox letters, and I
3 stepped back onto a stack of safety cones, and fell
4 off a platform.

5 Q. When you were counting the mailbox numbers,
6 do you recall whether your reader was able to read
7 the bar codes or whether you were counting them
8 manually?

9 A. I was counting them manually.

10 Q. Were you in the process of counting them
11 manually when you fell?

12 A. Yes.

13 Q. What were you standing on when you were
14 counting the mailbox numbers?

15 A. I was standing on the actual platform where
16 that section is located. I was standing on
17 anything.

18 Q. What do you mean when you say a platform?
19 I don't know what you mean.

20 A. That alcove where those letters are
21 located, it had a six-inch high wooden platform,
22 like a staging almost.

23 Q. Was it actually a physical part or attached
24 to the display?

1 A. Maybe ten minutes.

2 Q. Had you seen this platform on which you
3 stood, had you seen that prior to the day of your
4 accident?

5 A. No.

6 Q. So the setup in this particular display was
7 different than other Home Depot stores?

8 A. Yes.

9 Q. In your prior visit to the Manchester
10 store, prior to your accident, had you seen this
11 platform?

12 A. No. I don't think I counted that section.
13 I don't think I had that section.

14 Q. Did you stand on that platform at any point
15 in time prior to counting the mailbox numbers on the
16 day of your accident?

17 A. No.

18 Q. Why did you step backward?

19 A. I stepped backwards to review what I had
20 counted already. I just stepped back maybe six
21 inches.

22 Q. Was your intent to step off of the
23 platform?

24 A. No.

1 was the left-hand side of the display?

2 A. Was the wall, yes.

3 Q. And on the right-hand side of the platform
4 was the right-hand side display?

5 A. Another wall.

6 Q. And on the backside of the platform was
7 empty space?

8 A. No. It was another wall. It was three
9 walls of merchandise.

10 Q. So when you first stood up on the platform,
11 you first started counting merchandise on the
12 left-hand side of the display, correct?

13 A. Yes.

14 Q. And you were facing the left-hand side of
15 the display?

16 A. Yes.

17 Q. Do you recall whether you were counting
18 manually or whether you were using your bar code?

19 A. I was counting manually.

20 Q. While you were counting manually, that
21 means you were using both of your hands?

22 A. Yes.

23 Q. So both of your hands would have been in
24 front of you and shuffling through product as you

1 Q. And there would have been six inches of
2 space between what you were standing on and the
3 aisle?

4 A. Correct.

5 Q. Meaning, you will have been standing six
6 inches higher than the aisle?

7 A. Yes.

8 Q. And you were aware of that the entire time
9 you were counting the merchandise on the left-hand
10 side of the display, correct?

11 A. Correct.

12 Q. After ten minutes of counting the
13 merchandise on the left-hand side of the display,
14 what did you do next?

15 A. When I stepped back to review what I had
16 counted already, my foot caught onto a stack of
17 safety cones that they had set up for sale, rubber
18 safety cones.

19 Q. Where were the safety cones located?

20 A. Right in back of me.

21 Q. When did you first observe the safety
22 cones?

23 A. That was part of the items for sale. I
24 observed them immediately when I stepped up to the

1 area.

2 Q. So you saw the cones before you stepped on
3 the platform?

4 A. Yes.

5 Q. When you stepped backwards, were you still
6 looking at the merchandise on the left-hand side of
7 the display?

8 A. Yes.

9 Q. So when you stepped backwards with, you
10 think, your right foot, you were looking in front of
11 you and you stepped backward with your right foot,
12 correct?

13 A. Right.

14 Q. You didn't look behind you before you
15 stepped back with your right foot, correct?

16 A. No.

17 Q. So you didn't look to see what was behind
18 you before you stepped backward?

19 A. I knew what was behind me.

20 Q. You didn't look behind you before you
21 stepped backwards, correct?

22 A. No.

23 Q. No?

24 A. No.

1 Q. No, you didn't look behind you before you
2 stepped behind you?

3 A. No, I didn't look behind me.

4 Q. And you say you knew what was behind you.
5 You knew you were standing on a platform that was
6 six inches higher than the aisle?

7 A. Yes.

8 Q. And you also knew there were safety cones
9 in the vicinity of this display before you stepped
10 up onto the platform that you were standing on?

11 A. That was part of the items for sale, yes.

12 Q. And it's your understanding that as you
13 stepped off with your right foot, your right foot
14 became involved with those safety cones, and you
15 then fell from there?

16 A. Yes.

17 Q. Do you recall the way in which your body
18 moved as you fell?

19 A. I just fell into the aisle.

20 Q. Could you describe how your body moved?
21 Did you fall straight backward --

22 A. I believe so.

23 Q. -- or did you turn?

24 A. I believe so.

1 Q. You landed on your outstretched right hand
2 and arm?

3 A. Right.

4 Q. You didn't see the safety cones when your
5 foot became involved with them, right?

6 A. I didn't see them?

7 Q. Well, at the moment that your foot became
8 involved with those safety cones behind you, that's
9 something you didn't see, correct; it's something
10 you felt?

11 A. Yes.

12 Q. You saw the safety cones after you had
13 already fallen?

14 A. Right.

15 (Photographs marked as Exhibits 1 and 2
16 for identification)

17 Q. I'm showing you a photograph we marked as
18 Exhibit 1. I would ask you to take a look at that,
19 and let me know when you've had an opportunity to
20 look at that. Have you had a chance to look at
21 Exhibit 1?

22 A. Yes.

23 Q. Do you recognize what's depicted in Exhibit
24 1?

1 MR. HASKELL: When he asks you a yes or no
2 question, answer yes or no.

3 A. No.

4 Q. Are there any other ways in which Exhibit 1
5 differs from the scene of your accident, other than
6 the fact that there's no platform in Exhibit 1?

7 A. It's a lot less congested.

8 Q. What do you mean by that?

9 A. There were more items. There were flags
10 and driveway markers and all of that area was all
11 full of items. This is a lot neater.

12 Q. So there are fewer products displayed in
13 Exhibit 1 than there were at the scene of your
14 accident?

15 A. Correct.

16 Q. Does the display in Exhibit 1 have the same
17 -- you described it earlier as an alcove. Does it
18 have the same shape as the display involved in your
19 accident?

20 A. Yes.

21 Q. That's the portion that appears to have
22 kind of a white background in Exhibit 1?

23 A. Yes.

24 Q. There appear to be mailbox numbers and

1 safety cones and some red "For Sale" signs?

2 A. Yes.

3 Q. That portion of the display appears similar
4 to the display that you were working on when you
5 fell?

6 A. Similar, yes.

7 Q. Have you seen Exhibit 1 before today?

8 A. I think so. I think so.

9 Q. Do you know what store is depicted in
10 Exhibit 1?

11 A. I think that's the Manchester store.

12 Q. Do you know when that photograph was taken?

13 A. I'm not sure. I don't know.

14 Q. Are the safety cones that are depicted in
15 Exhibit 1 in the same location as the safety cones
16 that you became involved with in the process of your
17 fall as you described earlier?

18 A. No.

19 Q. Is it possible for you to draw into Exhibit
20 1 the platform that was present on the day of your
21 accident?

22 A. I can try.

23 MR. HASSELL: Can you do it, do you think?

24 THE WITNESS: I can try.

1 Q. I'm just looking for an outline sketch of
2 the approximate location of the platform and the
3 space that it took up.

4 A. (Witness complies).

5 Q. Have you now done that?

6 A. Yes.

7 Q. Do you recall what the platform was made
8 out of?

9 A. Wood.

10 Q. Do you recall what color it was?

11 A. It was just natural wood.

12 Q. Was it one piece or was it several pieces?
13 Could you describe it in any way?

14 A. It was slats of wood nailed onto a frame.

15 Q. There was just one top surface of the
16 platform?

17 A. No. It was several slats.

18 Q. But were there steps or was the top of the
19 platform at the same height, the same level?

20 A. It was all at the same height.

21 Q. And the same level?

22 A. Yes.

23 Q. Do you have any knowledge as to how it was
24 affixed to the display?

1 A. No.

2 Q. Could you draw in on Exhibit 1 the
3 approximate locations of the cones that you became
4 involved with in the course of your fall?

5 A. (Witness complies).

6 Q. Have you now done that?

7 A. Yes.

8 Q. You just drew in two black triangles to
9 indicate the approximate location of the cones; is
10 that correct?

11 A. That represents a stack of cones.

12 Q. Okay. As I look at Exhibit 1, the cones
13 were themselves on the platform?

14 A. Yes.

15 Q. Was there any other merchandise on the
16 platform other than one stack of cones?

17 A. Yes.

18 Q. What other merchandise was on the platform?

19 A. I believe there was a bucket with driveway
20 reflectors. I think it had driveway reflectors and
21 little driveway markers. There was other
22 merchandise, too.

23 Q. Just for the same of the record, the
24 platform that we drew in earlier is the series of

1 black lines that go horizontally in the display?

2 A. Yes.

3 Q. You observed the stack of safety cones
4 sitting on the platform before you stepped up on the
5 platform, correct?

6 A. Yes.

7 Q. You also observed the bucket of driveway
8 reflectors sitting on the platform before you
9 stepped up on the platform, correct?

10 A. Yes.

11 Q. And whatever other merchandise was up on
12 the platform, you had observed all of that?

13 A. Yes.

14 Q. You observed it before you stepped up on
15 the platform, correct?

16 A. Yes.

17 Q. The only product that you became involved
18 with was the pile of safety cones?

19 A. Correct.

20 Q. At the moment, the merchandise that you
21 were examining prior to your fall, the location in
22 the did I place where that merchandise is located,
23 is that visible in the display or not?

24 A. No.

1 or the floor of the platform?

2 A. The floor of the platform.

3 Q. The floor of the platform was six inches
4 higher than the floor of the aisle, correct?

5 A. Yes.

6 Q. So at the time of your accident, you had no
7 knowledge that if you stepped backward from one
8 surface to a surface six inches lower than the
9 surface on which you were standing, that there was a
10 possibility you might fall as a result of doing
11 that?

12 A. Did I have knowledge that if I stepped off
13 the platform I would fall?

14 Q. Were you aware at the time of your accident
15 that if you stepped backward from one surface that's
16 six inches higher than the surface immediately
17 behind you that you might fall as a result of doing
18 that?

19 A. But I didn't step backwards. I stepped
20 sideways.

21 Q. I'm just asking you if that's something
22 you're aware of. If you stepped backward from one
23 surface that's six inches higher than the surface
24 immediately behind it, were you aware that you could

1 fall as a result of doing that?

2 MR. HASKELL: Yes or no.

3 A. I was aware, yes.

4 Q. Were you also aware that if you fall, you
5 might be injured?

6 A. Yes.

7 Q. It's your testimony that you didn't step
8 off the platform, you stepped backward and became
9 involved with the cones, which then caused you to
10 fall off the platform?

11 A. Yes.

12 Q. When you stepped backward, you didn't look
13 to see what was behind you, correct?

14 A. I don't believe so.

15 Q. Did you strike the ground with any other
16 parts of your body other than your right hand and
17 arm or wrist or right hand or arm or wrist? Let me
18 ask you a better question.

19 Can you describe how you landed?

20 A. I landed -- the first part of my body to
21 hit the concrete was my right wrist.

22 Q. Could you describe the position of your
23 body when your right wrist hit the concrete?

24 A. I just fell back like that.

1 A. Rectangle.

2 Q. So the left-hand side of the alcove and the
3 right-hand side of the alcove --

4 MR. HASKELL: A trapezoid.

5 MR. CALLANAN: Yes. I was forgetting my
6 geometry.

7 Q. As you stood on the platform, the left-hand
8 side of the alcove and the right-hand side of the
9 alcove were at right angles to the face of the
10 alcove?

11 A. Yes.

12 Q. Is it possible, just because Exhibit 1
13 gives us an angle depiction, is it possible for you
14 to draw a bird's eye view of the alcove and the
15 platform and the cones and where you were?

16 MR. HASKELL: A top view.

17 A. I will try.

18 Q. Looking straight down.

19 (Document marked as Exhibit 3
20 for identification)

21 Q. For the sake of the record, I want to go
22 back over the diagram you've just drawn. Starting
23 with the outside, there's a rectangle to indicate
24 the rough dimensions of the alcove itself, correct?

1 A. Yes.

2 Q. Can you just put the word "left side" next
3 to the left side of the alcove?

4 A. (Witness complies).

5 Q. You've now done that, correct?

6 A. Yes.

7 Q. Could you do the same for the right-hand
8 side as well?

9 A. (Witness complies).

10 Q. Okay. How do you refer to the other wall
11 of the alcove, other than the right wall and the
12 left wall?

13 A. This would be the rear.

14 Q. Okay. You've written in the word "aisle"
15 to indicate the aisle in the store?

16 A. Yes.

17 Q. The lower portion of the rectangle adjacent
18 to the aisle, we've gone two lines and six inches to
19 indicate --

20 A. The step up.

21 Q. That's the height of the platform itself?

22 A. Yes.

23 Q. Within the rectangle, we've got two
24 rectangles with the words "signs" in them to

1 indicate what?

2 A. Those were displays with signs that they
3 were selling.

4 Q. Some of the merchandise that hung on the
5 rear wall?

6 A. Yes.

7 Q. Beware of dog signs and stuff like that?

8 A. Yes.

9 Q. Then we've got two large cones and cones to
10 indicate two different piles of cones that sat on
11 the platform?

12 A. Yes.

13 Q. Then you've got a circle with the word
14 "flags?" to indicate?

15 A. That was a bucket of something.

16 Q. You're not sure what was in the bucket?

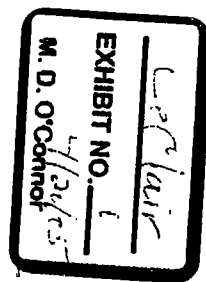
17 A. They were either little pennants or flags
18 and then there was another bucket with reflectors
19 and driveway markers.

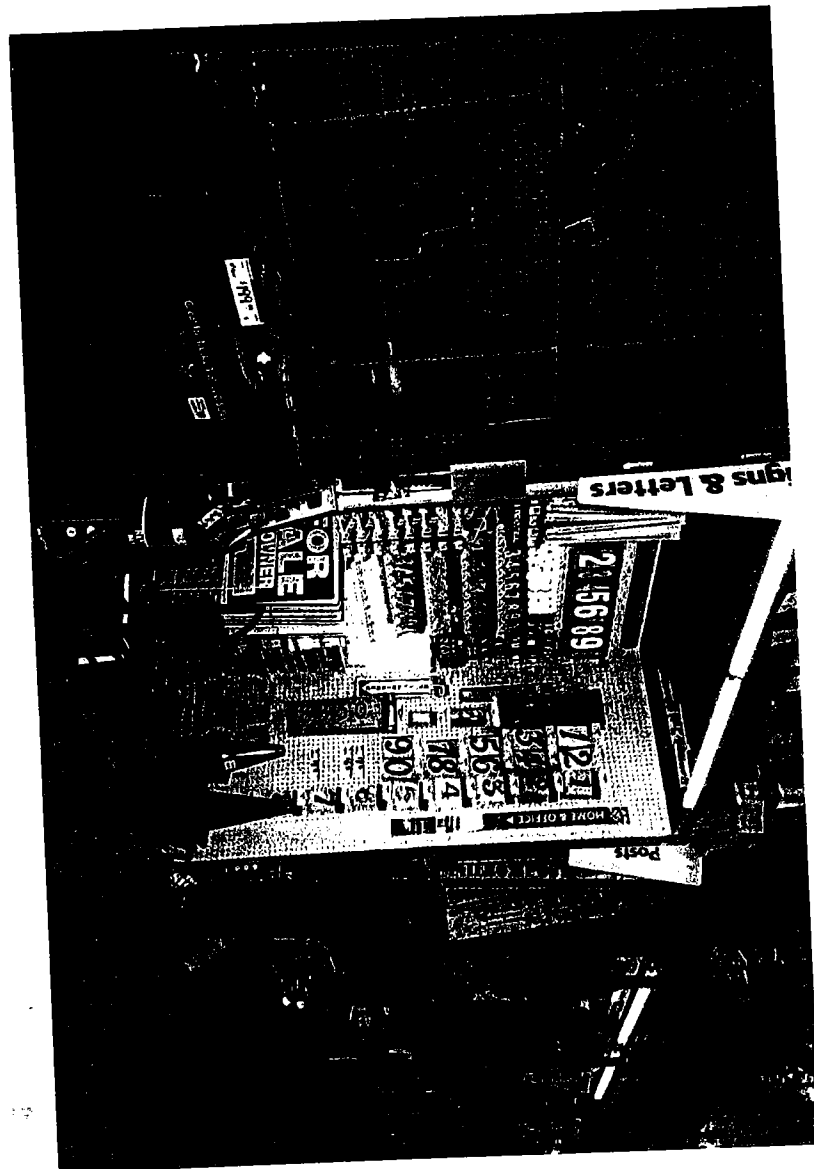
20 Q. That's within the circle we see --

21 A. Yes.

22 Q. Would you mark with an "X" the approximate
23 location where you fell?

24 A. (Witness complies).





Paul Lechar
4-20-05

